

SENATE BILL No. 190

By Committee on Judiciary

2-7

1 AN ACT concerning crimes, punishment and criminal procedure; release
2 prior to trial; requiring a waiver of extradition proceedings as a
3 condition of release prior to trial for any person charged with a felony;
4 amending K.S.A. 2022 Supp. 22-2802 and repealing the existing
5 section.

6
7 *Be it enacted by the Legislature of the State of Kansas:*

8 Section 1. K.S.A. 2022 Supp. 22-2802 is hereby amended to read as
9 follows: 22-2802. ~~(1)~~(a) Any person charged with a crime shall, at the
10 person's first appearance before a magistrate, be ordered released pending
11 preliminary examination or trial upon the execution of an appearance bond
12 in an amount specified by the magistrate and sufficient to assure the
13 appearance of such person before the magistrate when ordered and to
14 assure the public safety. If the person is being bound over for a felony, the
15 bond shall also be conditioned on the person's appearance in the district
16 court or by way of a two-way electronic audio-video communication as
17 provided in subsection ~~(14)~~ (o) at the time required by the court to answer
18 the charge against such person and at any time thereafter that the court
19 requires. Unless the magistrate makes a specific finding otherwise, if the
20 person is being bonded out for a person felony or a person misdemeanor,
21 the bond shall be conditioned on the person being prohibited from having
22 any contact with the alleged victim of such offense for a period of at least
23 72 hours. The magistrate may impose such of the following additional
24 conditions of release as will reasonably assure the appearance of the
25 person for preliminary examination or trial:

26 ~~(a)~~(1) Place the person in the custody of a designated person or
27 organization agreeing to supervise such person;

28 ~~(b)~~(2) place restrictions on the travel, association or place of abode of
29 the person during the period of release;

30 ~~(c)~~(3) impose any other condition deemed reasonably necessary to
31 assure appearance as required, including a condition requiring that the
32 person return to custody during specified hours;

33 ~~(d)~~(4) place the person under a house arrest program pursuant to
34 K.S.A. 2022 Supp. 21-6609, and amendments thereto; or

35 ~~(e)~~(5) place the person under the supervision of a court services
36 officer responsible for monitoring the person's compliance with any

1 conditions of release ordered by the magistrate. The magistrate may order
2 the person to pay for any costs associated with the supervision provided by
3 the court services department in an amount not to exceed \$15 per week of
4 such supervision. The magistrate may also order the person to pay for all
5 other costs associated with the supervision and conditions for compliance
6 in addition to the \$15 per week.

7 ~~(2)~~(b) In addition to any conditions of release provided in subsection
8 ~~(1)~~ (a), for any person charged with a felony, the magistrate may order
9 such person to submit to a drug and alcohol abuse examination and
10 evaluation in a public or private treatment facility or state institution and,
11 if determined by the head of such facility or institution that such person is
12 a drug or alcohol abuser or is incapacitated by drugs or alcohol, to submit
13 to treatment for such drug or alcohol abuse, as a condition of release.

14 ~~(3)~~(c) *In addition to any conditions of release provided in subsection*
15 *(a), for any person charged with a felony, the magistrate shall order such*
16 *person to execute a waiver of extradition:*

17 *(1) Stating that such person consents to extradition to Kansas and*
18 *waives all procedures incidental to extradition proceedings pursuant to*
19 *article 27 of chapter 22 of the Kansas Statutes Annotated, and*
20 *amendments thereto, or any other law if such person is arrested in another*
21 *state while on bond; and*

22 *(2) acknowledging that such person shall not be released prior to*
23 *trial in any other state pending extradition to Kansas.*

24 *(d) The appearance bond shall be executed with sufficient solvent*
25 *sureties who are residents of the state of Kansas, unless the magistrate*
26 *determines, in the exercise of such magistrate's discretion, that requiring*
27 *sureties is not necessary to assure the appearance of the person at the time*
28 *ordered.*

29 ~~(4)~~(e) A deposit of cash in the amount of the bond may be made in
30 lieu of the execution of the bond pursuant to subsection-~~(3)~~ (d). Except as
31 provided in subsection-~~(5)~~ (f), such deposit shall be in the full amount of
32 the bond and in no event shall a deposit of cash in less than the full amount
33 of bond be permitted. Any person charged with a crime who is released on
34 a cash bond shall be entitled to a refund of all moneys paid for the cash
35 bond, after deduction of any outstanding restitution, costs, fines and fees,
36 after the final disposition of the criminal case if the person complies with
37 all requirements to appear in court. The court may not exclude the option
38 of posting bond pursuant to subsection-~~(3)~~ (d).

39 ~~(5)~~(f) Except as provided further, the amount of the appearance bond
40 shall be the same whether executed as described in subsection-~~(3)~~ (d) or
41 posted with a deposit of cash as described in subsection-~~(4)~~ (e). When the
42 appearance bond has been set at \$2,500 or less and the most serious charge
43 against the person is a misdemeanor, a severity level 8, 9 or 10 nonperson

1 felony, a drug severity level 4 felony committed prior to July 1, 2012, a
2 drug severity level 5 felony committed on or after July 1, 2012, or a
3 violation of K.S.A. 8-1567, and amendments thereto, the magistrate may
4 allow the person to deposit cash with the clerk in the amount of 10% of the
5 bond, provided the person meets at least the following qualifications:

6 ~~(A)~~(1) Is a resident of the state of Kansas;

7 ~~(B)~~(2) has a criminal history score category of G, H or I;

8 ~~(C)~~(3) has no prior history of failure to appear for any court
9 appearances;

10 ~~(D)~~(4) has no detainer or hold from any other jurisdiction;

11 ~~(E)~~(5) has not been extradited from, and is not awaiting extradition
12 to, another state; and

13 ~~(F)~~(6) has not been detained for an alleged violation of probation.

14 ~~(6)~~(g) In the discretion of the court, a person charged with a crime
15 may be released upon the person's own recognizance by guaranteeing
16 payment of the amount of the bond for the person's failure to comply with
17 all requirements to appear in court. The release of a person charged with a
18 crime upon the person's own recognizance shall not require the deposit of
19 any cash by the person.

20 ~~(7)~~(h) The court shall not impose any administrative fee.

21 ~~(8)~~(i) In determining which conditions of release will reasonably
22 assure appearance and the public safety, the magistrate shall, on the basis
23 of available information, take into account the nature and circumstances of
24 the crime charged; the weight of the evidence against the defendant;
25 whether the defendant is lawfully present in the United States; the
26 defendant's family ties, employment, financial resources, character, mental
27 condition, length of residence in the community, record of convictions,
28 record of appearance or failure to appear at court proceedings or of flight
29 to avoid prosecution; the likelihood or propensity of the defendant to
30 commit crimes while on release, including whether the defendant will be
31 likely to threaten, harass or cause injury to the victim of the crime or any
32 witnesses thereto; and whether the defendant is on probation or parole
33 from a previous offense at the time of the alleged commission of the
34 subsequent offense.

35 ~~(9)~~(j) The appearance bond shall set forth all of the conditions of
36 release.

37 ~~(10)~~(k) A person for whom conditions of release are imposed and
38 who continues to be detained as a result of the person's inability to meet
39 the conditions of release shall be entitled, upon application, to have the
40 conditions reviewed without unnecessary delay by the magistrate who
41 imposed them. If the magistrate who imposed conditions of release is not
42 available, any other magistrate in the county may review such conditions.

43 ~~(11)~~(l) A magistrate ordering the release of a person on any

1 conditions specified in this section may at any time amend the order to
2 impose additional or different conditions of release. If the imposition of
3 additional or different conditions results in the detention of the person, the
4 provisions of subsection ~~(10)~~ (k) shall apply.

5 ~~(12)~~(m) Statements or information offered in determining the
6 conditions of release need not conform to the rules of evidence. No
7 statement or admission of the defendant made at such a proceeding shall
8 be received as evidence in any subsequent proceeding against the
9 defendant.

10 ~~(13)~~(n) The appearance bond and any security required as a condition
11 of the defendant's release shall be deposited in the office of the magistrate
12 or the clerk of the court where the release is ordered. If the defendant is
13 bound to appear before a magistrate or court other than the one ordering
14 the release, the order of release, together with the bond and security shall
15 be transmitted to the magistrate or clerk of the court before whom the
16 defendant is bound to appear.

17 ~~(14)~~(o) Proceedings before a magistrate as provided in this section to
18 determine the release conditions of a person charged with a crime
19 including release upon execution of an appearance bond may be conducted
20 by two-way electronic audio-video communication between the defendant
21 and the judge in lieu of personal presence of the defendant or defendant's
22 counsel in the courtroom in the discretion of the court. The defendant may
23 be accompanied by the defendant's counsel. The defendant shall be
24 informed of the defendant's right to be personally present in the courtroom
25 during such proceeding if the defendant so requests. Exercising the right to
26 be present shall in no way prejudice the defendant.

27 ~~(15)~~(p) The magistrate may order the person to pay for any costs
28 associated with the supervision of the conditions of release of the
29 appearance bond in an amount not to exceed \$15 per week of such
30 supervision. As a condition of sentencing under K.S.A. 2022 Supp. 21-
31 6604, and amendments thereto, the court may impose the full amount of
32 any such costs in addition to the \$15 per week, including, but not limited
33 to, costs for treatment and evaluation under subsection ~~(2)~~ (b).

34 Sec. 2. K.S.A. 2022 Supp. 22-2802 is hereby repealed.

35 Sec. 3. This act shall take effect and be in force from and after its
36 publication in the statute book.